

SETTLEMENT OF CLAIMS

Convention signed at Lima December 4, 1868

Senate advice and consent to ratification April 15, 1869

Ratified by the President of the United States May 3, 1869

Ratifications exchanged at Lima June 4, 1869

Entered into force June 4, 1869

Proclaimed by the President of the United States July 6, 1869

*Terminated February 26, 1870*¹

16 Stat. 751; Treaty Series 281

Whereas claims may have, at various times since the signature of the decisions of the mixed commission which met in Lima in July, 1863, been made on the government of the United States of America, by citizens of Peru, and have been made by citizens of the United States of America on the government of Peru, and whereas some of such claims are still pending, the President of the United States of America and the President of Peru, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a convention, and have named as their plenipotentiaries to confer and agree thereupon, that is to say:

The President of the United States names Alvin P. Hovey, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Peru, and the President of Peru names his excellency Doctor Don José Antonio Barrenechea, minister of foreign affairs of Peru, who, after having communicated to each other their respective full powers, found in good and true form, have agreed as follows:

ARTICLE I

The high contracting parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of Peru, and all claims on the part of corporations, companies, or private individuals, citizens of Peru, upon the government of the United States, which may have been presented to either government for its

¹ For final report of Commission, see Moore, *International Arbitrations*, vol. II, p. 1645.

interposition since the sittings of the said mixed commission, and which remain yet unsettled, as well as any other claims which may be presented within the time specified in Article III hereinafter, shall be referred to the two commissioners, who shall be appointed in the following manner, that is to say: One commissioner shall be named by the President of the United States, and one by the President of Peru. In case of the death, absence, or incapacity of either commissioner, or in the event of either commissioner omitting or ceasing to act as such, the President of the United States or the President of Peru, respectively, shall forthwith name another person to act as commissioner in the place or stead of the commissioner already named. The commissioners so named shall meet at Lima at their earliest convenience after they have been respectively named, not to exceed three months from the ratification of this convention, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such claims as shall be laid before them on the part of the governments of the United States and Peru, respectively, and such declarations shall be entered on the record of the commission.

The commissioners shall then, and before proceeding to other business, name some third person of some third nation to act as an arbitrator or umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person of a third nation, and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen to be arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall have already been made and subscribed by the commissioners, which shall be entered upon the records of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another and different person shall be named as aforesaid to act as such arbitrator or umpire in the place and stead of the person so originally named as aforesaid, and shall make and subscribe such declaration as aforesaid.

ARTICLE II

The commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order and in such manner as they may conjointly think proper, but upon such evidence or information as shall be fur-

nished by or on behalf of their respective governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective governments, in support of, or in answer to any claim, and to hear, if required, one person on each side on behalf of each government as counsel or agent for such government, on each and every separate claim. Should they fail to agree in opinion on any individual claim, they shall call to their assistance the arbitrator or umpire whom they have agreed to name, or who may be determined by lot, as the case may be, and such arbitrator or umpire, after having examined the evidence adduced for and against the claim, and after having heard, as required, one person on each side, as aforesaid, and consulted with the commissioners, shall decide thereupon finally and without appeal. The decision of the commissioners and of the arbitrator or umpire shall be given upon each claim in writing, and shall be signed by them respectively. It shall be competent for each government to name one person to attend the commissioners as agent on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The President of the United States, and the President of Peru, hereby solemnly and sincerely engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions, without any objections, evasion, or delay whatsoever. It is agreed that no claim arising out of any transaction of a date prior to the 30th of November, 1863, shall be admissible under this convention.

ARTICLE III

Every claim shall be presented to the commissioners within two months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners, or of the arbitrator or umpire, in the event of the commissioners differing in opinion thereon, and then and in every such case the period for presenting the claim may be extended to any period not exceeding one month longer.

The commissioners shall be bound to examine and decide upon every claim within six months from the day of their first meeting.

ARTICLE IV

All sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid by the one government to the other, as the case may be, within four months after the date of the decision, without interest, and without any deduction, save as specified in Article VI, hereinafter.

ARTICLE V

The high contracting parties agree to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commissioners, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and therefore inadmissible.

ARTICLE VI

The salaries of the commissioners shall not exceed forty-five hundred dollars in United States gold coin, each, yearly. Those of the secretaries and arbitrator or umpire shall be determined by the commissioners, and in case the said commission finish its labors in less than six months, the commissioners together with their assistants will be entitled to six months' pay, and the whole expenses of the commission shall be defrayed by a ratable deduction on the amount of the sums awarded by the commissioners, provided always that such deduction shall not exceed the rate of five per cent, on the sums so awarded. The deficiency, if any, shall be defrayed by the two governments in moieties.

ARTICLE VII

The present convention shall be ratified by the President of the United States, by and with the consent of the Senate thereof, and by the President of Peru, with the approbation of the Congress of that republic, and the ratifications will be exchanged in Lima, as soon as may be, within six months of the date hereof.

ARTICLE VIII

The high contracting parties declare that this convention shall not be considered as a precedent obligatory on them, and that they remain in perfect liberty to proceed in the manner that may be deemed most convenient regarding the diplomatic claims that may arise in the future.

In witness whereof the respective plenipotentiaries have signed the same in the English and Spanish languages, and have affixed thereto the seals of their arms.

Done in Lima, the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

ALVIN P. HOVEY [SEAL]

J. A. BARRENECHEA [SEAL]